Supreme Court, U.S.
FILED
DEC 10 1993
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CASE NO_____
IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER, 1993 TERM

ARTHUR H. KEELS, Petitioner

vs.

STATE OF SOUTH CAROLINA; HON. WILLIAM T. HOWELL, JUDGE; CHIEF JUSTICE GEORGE T. GREGORY, JR.; ASSOC. JUSTICE DAVID W. HARWELL; ASSOC. JUSTICE A. LEE CHANDLER; ASSOC. JUSTICE ERNEST A. FINNEY, JR.; ASSOC. JUSTICE JEAN TOAL; JOHN E. WAITES, ATTY.; MICHAEL S. CHURCH, ATTY.; FUNDERBURK & DERRICK, ATTYS.; JAMES W. ALFORD, ATTY.

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, CASE NO. 3:91-1570-3-17 BD

Arthur H. Keels
Pro Se Petitioner
163 Pleasant View Drive
Blythewood, S. C. 29016
Phone (803) 786-1111

QUESTIONS PRESENTED FOR REVIEW

1. Are the allegations true?

2. Does the Court have jurisdiction over the subject matter?

3. Does the Court have jurisdiction over the persons?

4. Does Judge Howell have absolute immunity?

5. Does the Fourteenth Amendment to the Constitution guarantee South Carolina citizens the right to a jury trial and due process of law?

6. Is this a frivilous suit?

OTHER COUNSEL OF RECORD

Edwin E.Evans, Esq.
Office of Atty. Gen. of S. C.
P. O. Box 11549
Columbia, S. C. 29211

Michael S. Church, Esq.
P. O. Box 1473
Columbia, S. C. 29202

James W. Alford, Esq.
P. O. Box 8448
Columbia, S. C. 29202

R. Lewis Johnson, Esq.
P. O. Box 8448
Columbia, S. C. 29202

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TABLE OF AUTHORITIES

1. See Conley v. Gibson, 355 U.S. 41, 48, 78 S. Ct. 99, 103, 2 L. Ed. 2d 81, 83 n. 1 (3d Cir. 1987).

2. 365 U. S. 184, 5 LEd (2d) at 503, 81 S. Ct. 482 quoting United States v. Classic, 313 U.S. 299, 326 (1941)

3. Dykes V. Hosemann, 743 F. 2d 1488 (1984)

4. U.S. v. Washington, 705 F. 2d 489, 227 U.S. App. D.C. 184.

REFERENCE OF OPINIONS

5-31-91	Case filed in Federal District Court
8-19-91	Petition for Certiorari to Supreme Ct.
9-6-91	Sup. Ct. sends back to Ct. of Appeals
3-19-93	Case dismissed in Fed. Dist. Court
5-11-93	Appeal to U. S. Court of Appeals
8-2-93	Court of Appeals affirms Dismissal
8-12-93	Request for re-hearing - Ct. of App.
9-13-93	Re-hearing denied
12-7-93	Petition for Certiorari re-newed

STATEMENT OF FACTS

I filed a complaint against two law firms for malpractice on December 9, 1988, and asked for a jury trial. I have now been fighting legal battles for five years to have my case heard, and it has not been heard yet. I had supoenaed eighteen witnesses, and had certified copies of deeds, plats, and other evidence that has never been allowed in court. This is not due process of law as described in the Fourteenth Amendment to the U. S. Constitution, and I never would have believed that such a clear and deliberate deprivation of human rights could occur in any so-called democratic government in the world.

The two law firms kept delaying the trial, and had their motions heard three times for dismisal or summary judgment, but because their negligence was so glaring and undeniable, they were turned down. However, each time the judges let them, the losing parties, write the orders because

they were lawyers and I was not. So, each time in the orders, they specified "Without Prejudice", thus allowing them to keep on moving for summary judgment before another judge.

Finally, they got Judge William T. Howell, who granted them summary judgments in direct opposition to the facts, the law, and court rules, on the grounds that even without the negligence, I could not have won the case anyway. A look at the facts will show that there is no way I could have lost if it had not been for their negligence.

Judge Howell took a month and a half to decide that there were no material facts in dispute, and then, in appealing his summary judgments, there was such a dispute about the material facts that an order settling the record was necessary, at which time, Judge Howell threw out my statement of facts and let the attorneys write their own versions of the facts. The court rules for summary judgment are simple; the facts are not to be decided by a judge in the pleading stage,

and even if he doesn't believe that I can prove my allegations, when there are facts in dispute, he is not supposed to grant summary judgment. Not only were material facts in dispute, but I offered positive,certified proof that showed their summary judgments to be completely false, and Judge Howell would not acknowledge it. I asked for a jury trial from the very beginning, and I never agreed to let the judge decide any of the facts.

This case then went to the S. C. Supreme Court, who affirmed the summary judgments without even allowing me an oral hearing. I then filed Petitions for Certiorari to the U. S. Supreme Court on the summary judgment of the malpractice case, and also on this present case against the judges and attorneys for depriving me of my civil rights. The U. S. Supreme Court did not hear the malpractice case, most probably because deprivation of Constitutional rights had not been alleged in the complaint or

litigated on, and they reserved judgment on the Constitutional rights issue with the comment that it must first be exhausted in the lower Federal courts.

Now, the lower Federal Courts have dismissed the case on grounds of Collateral Estoppel, among other things, and claim that the Constitutional rights issue has already been litigated. This simply doesn't make sense. First, the Supreme Court says it should be tried in the lower court, and then the lower court puts it out, saying that it has already been tried. Judge Joseph Anderson, Jr. dismissed the case without a hearing, called it a frivilout suit, and ordered that I should pay sanctions.

What happened to the jury trial that I asked for? Are the Federal Courts going to get by depriving me of my Constitutional rights just like the state courts did? There are a lot of unresolved facts in this case, and I want a jury to see the evidence and decide the facts.

Given the facts of this case, I am confident that a fair jury trial of the issues involved would go a long way toward straightening out the inequities of our judicial system.

I apologise that this statement of facts seems argumentive, but for the sake of freedom and justice, I feel that the true facts need to be known.

The provable, certified, and indisputable facts have not been acknowledged by the Courts, and there has not been a trial at all, much less a jury trial as requested. The Court has allowed the Respondents to write their own set of facts which are completely false, and that is why I am suing. Now, the Federal Court seems to have accepted their version of the facts as true, and made a ruling accordingly.

Civil Rights deprivation is a very serious matter, and is in no way frivilous. Courts in the past have given special attention that no such abuse should occur:

"An action brought under this section (civil

rights)should not be dismissed if plaintiff might obtain relief on facts suggested, but inarticulately stated, by the complaint." Webb v. Oswald, D.C.N.Y. 1971, 334 F. Supp. 993.

What do I have to do to get a jury trial? Surely the guarantees of the Constitution must mean something.

ARGUMENT

1. Are the allegations true?

The allegations have not been denied or answered by the State defendants. The allegations are backed up by positive, indisputable evidence upon which no reasonable minds could differ. I have asked for a jury trial, but the lower court has dismissed the case without even looking at the evidence. Several times in the Dismissal, it was stated that, "Unless he can prove such and such, he doesn't have a case", but they never gave me a chance to prove anything.

The courts have made it clear that:

> "On a motion to dismiss for failure to state a claim, all allegations in the pleadings must be accepted as true and the plaintiff must be

given the benefit of every favorable inference that can be drawn from those allegations." [1]

Therefore, since this case was dismissed on "Failure to state a claim upon which relief can be granted", all allegations must be accepted as true.

2. Does the Court have jurisdiction over the subject matter?

Federal Court has jurisdiction when the case involves Constitional issues, and Constitutiional issues are not only involved, that is what the whole case is about.

"42 U. S. C. § 1983 creates a civil cause of action, enforceable in federal courts, against any person, acting under color of state authority, who deprives another of any rights,

privileges or immunities secured by the Constitution or laws of the United States."

"Misuse of power, posessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law." [2]

The allegations in this case are that the judge, acting in conspiracy with the attorneys, and under color of state law, has deliberately deprived me of the Constitutional right to due process of law in several particulars, and has also deliberately deprived me of my Constitutional right to a trial by a jury. In the circumstances of this case, without the benefit of a trial as yet, these allegations

are required to be taken as true by the courts.

3. Does the court have jurisdiction over the persons?

Federal Constitutional laws have been openly and deliberately violated beyond the limits of what has been set by Congress and the courts, and the wrongdoers are answerable in federal court.

As to the attorneys, the lower court has proclaimed that since they are not government officials, they can't be sued, but the law plainly says different:

> "Even if judge himself is held to be absolutely immune from suit, private parties who conspire with the judge act under color of

state law for section 1983 purposes." [3]

Conspiracy has been alleged, and whether the attorneys participated in conspiracy is a triable issue of fact. Certainly, a judge who has not even seen the evidence cannot make that decision when a jury trial has been requested.

4. Does Judge Howell have absolute immunity?

It has been alleged that the judge acted in total disregard to the laws relating to his authority, court rules, and due process of law for the specific intent to deprive me of my Constitutional rights, and that this was in clear absence of his jurisdiction. It is not the judge's official capacity to rule on facts when a jury trial has been demanded. Whether the judge acted in

his official capacity, and whether that action was taken knowingly and deliberately is a triable issue of fact for a jury to determine.

> "Color of state law component of section 1983 may be satisfied by showing that official act of defendant judge was product of corrupt conspiracy involving judge and other private parties." [3]
>
> Judge who acts in absence of subject matter jurisdiction may be held liable for his judicial acts." [3]
>
> "Judge who acts in clear and complete absence of personal jurisdiction loses his judicial immunity." [3]

The law is plain that a judge is not above the

law, and he must follow court rules or he is to be held liable. Intent and purpose are triable issues of fact to be determined by a jury who looks at the evidence, and the degree of the corruption.

5. Does the Fourteenth Amendment to the Constitution guarantee South Carolina citizens the right to a jury trial and due process of law? The Attorney General of S. C. says that it does not and the lower Federal Court has agreed with him. Does this mean that Section 1983 is null and void, and the state judicial officials are really free to violate court rules and due process laws at will, and there is no Federal recourse? I find this hard to believe,

but this is exactly what is happening in S. C.

I believe that the U. S. Supreme Court has a duty and an obligation to rectify this terrible injustice as soon as possible, and I truly do not believe that there could be a more blatant and deliberate violation of the fundamental civil rights than this case.

6. Is this a frivilous suit?

The lower Federal Court says that this is a frivilous suit, and that I must pay attorneys' fees for the defendants. Well, that's just like the Comunist government killing the Chinese people who demonstrated for their human rights. I was clearly and deliberately denied my rights supposedly guaranteed by the

Constitution, and because I complained about it, I am threatened with financial ruin. The reason I am going Pro Se is because I couldn't afford to pay a lawyer in the first place. I find it hard to believe that this is happening in this United States that I have always been so proud of.

I certainly don't consider this to be a frivilous case. I consider it to be one of the most important cases in this country. I also believe that former president Ronald Reagin and Dan Quayle would consider it important too, because they had Judicial reform high on their lists of needs.

SUMMARY

I am a Pro Se Apellant, who has not even consulted with an attorney about this case, and I am up against four law firms, six judges, and the Attorney General for the state of South Carolina. I respectfully ask this Honorable Court to hold my complaint to a less stringent standard than those drafted by attorneys. I feel that I have done a very inadequate job of presenting this case properly, and have thereby let down the mainstream American people who are suffering so much from the inequities of the judicial system as it now stands. I have determined that if I receive any kind of monetary relief, that I will donate every penny of it to charity, because I don't want it to appear that

I am suing just to get money. The reason I I am suing is because the Judicial System in South Carolina is sick and it is in dire need of a cure. No one else seems to think that it is any use to try to help, but I have faith in this Supreme Court, and in the principles of justice upon which this nation is founded.

I am not asking this Honorable Court to render a decision in my favor. All I am asking for is to have a trial by a jury of my peers, and let them look at the evidence and decide the facts. I beg and plead, please send this case back to the lower court for a jury to make the decisions.

I am absolutely sure that if I am given a trial by

a jury of my peers, and the true facts are decided by the jury, it will be clearly shown that the attorneys have conspired with judges to deliberately and totally disobey Court Rules,Due Process of Law, and the most basic of human rights as guaranteed by the United States Constitution.

It is sincerely hoped that this Honorable Court will re-affirm its former position that was stated by the Honorable Justice Harlan, as he declared in the case of Plessy v. Ferguson, 163 U.S. 537, 539 (1896), when he stated:

"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most

powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."

All I am asking for is a chance to prove my case before a jury of my peers.

In closing, it is interesting to note that the Respondents have not denied or challenged the truthfulness of the underlying cause of this action; that the Summary Judgments of Judge William T. Howell were based on a deliberate falsehood. It was deliberate because clear and indiputable proof in opposition to the Summaries was offered at the hearing and he would not accept it.

So, instead of denying the charges, they claim

that he had a perfect right to usurp authority and rule on facts in dispute when a jury trial had been demanded.

This is simply not right morally, and it is not right legally. Judge Howell is not above the law. "Verdicts contrary to law and instructions of court, are lawless, denial of due process and constitute exercise of erroneously seized power." [4] Whether the attorneys conspired with Judge Howell in this alleged illegal action, and whether he knowingly and deliberately did this, is a question for a jury to determine, and should not be dismissed by another fellow-judge.

In the interest of justice, and on behalf of all of the citizens of this United States, please let these

facts be decided by a jury of my peers.

December 7, 1993 _____

Blythewood, S. C.

Arthur H. Keels

Pro Se Appellant

163 Pleasant View Dr.

Blythewood, S. C. 29016

Phone (803) 786-1111

(Entered 3-19-93)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA, COLUMBIA DIVISION

CA No. 3:91-1570-17BD

ORDER

Arthur H. Keels, Plaintiff

vs.

State of S. C., Hon. William T. Howell, Judge; Chief Justice George T. Gregory, Jr.; Assoc. Jus. David W. Harwell; Assoc. Jus. A. Lee Chandler; Assoc. Jus. Ernest A. Finney, Jr.; Assoc. Jus. Jean Toal; John E. Waites, Atty.;Michael S. Church, Atty., Funderburk & Derrick, Attys.; and James W. Alford, Atty., Defendants.

This is a discrimination case filed by the plaintiff pro se pursuant to 42 U.S.C. § 1983. The Defendants, State of South Carolina, William T. Howell,

and the five named Justices of the South Carolina Supreme Court have filed a Motion to Dismiss pursuant to Rule 12(b)(1) and (6), Fed. R. Civ. P.

The remaining Defendants have filed Answers alleging , inter alia, that Plaintiff's action should be dismissed. The plaintiff also filed a Motion for Default and for the relief demanded in the complaint.

This matter is being handled by the court without reference to a Magistrate Judge pursuant to Local Rule 19.02.

Background

This Federal Court case arises out of a malpractice action brought against the Defendants,John E. Waites and the law firm of Funderburk & Derrick, in the Richland County Court of Common Pleas. Mr. Waites had represented the plaintiff in a State equity court case, and the law firm of Funderburk & Derrick represented the plaintiff in the appeal of that case. Mr. Waites was represented in the malpractice action by the Defendant Michael S. Church, and the law firm of Funderburk & Derrick

was represented by the Defendant James W. Alford. Defendant William T. Howell, a South Carolina Circuit Judge, granted summary judgment for the Defendants in that malpractice case (Civil Action No. 88-CP-40-6013). The Plaintiff appealed Judge Howell's Order to the South Carolina Supreme Court. On April 1, 1991, the Supreme Court unanimously affirmed Judge Howell's Order. Keels v. Waites, et al, Memorandum Opinion No. 91-MO-93. Plaintiff's request for a re-hearing was denied by the Supreme Court on May 22, 1991.

The Plaintiff hereafter filed this action in United States District Court pursuant to 42 U.S.C. § 1983, alleging a denial of his due process rights and the right to a jury trial under the United States Constitution. The Defendants in this action consist of the attorneys that represented the Plaintiff in his original action (Mr. Waites and Funderburk & Derrick), the attorneys that represented Waites and Funderburk & Derrick in the malpractice case (Mr. Church and Mr. Alford) the State Circuit Judge who granted

summary judgment for the Defendants in Plaintiff's malpractice action, the Members of the South Carolina Supreme Court who denied the appeal of the State Circuit Judge's Order, and the State of South Carolina itself.

As noted, the Defendants have moved for dismissal of this case. As the Petitioner is proceeding pro se, Judge Gambrell filed an order on July 2, 1991 advising the Plaintiff of his right to respond to the Motions to Dismiss, and carefully pointing out to the Plaintiff the law in this area and the provisions of the Federal Rules of Civil Procedure. The Plaintiff filed a Return to the Motion to Dismiss on July 1, 1991 and a response to Judge Gambrell's Order on July 5, 1991. As allowed in Judge Gambrell's Order, the Defendants, James W. Alford and Funderburk & Derrick, filed a Memorandum of Law on August 5, 1991. Also, the Defendants to whom Plaintiff's Motion for Judgment by Default was directed filed a Memorandum in Opposition on July 18, 1991.

Discussion

This Court required to construe pro se complaints liberally. Such pro se complaints are held to a less stringent standard than those drafted by attorneys. Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir.), cert, denied, 439 U.S. 970 (1978) A Federal District Court is charged with liberally construing a complaint filed by a pro se litigant to allow the develop[ment of a potentially meritorious case. see Cruz v. Beto, 405 U. S. 319 (1972). However, even after applying this less stringent standard, Plaintiff's 1983 Complaint is subject to dismissal.

(a) Plaintiff's Motion for Judgment by Default. Plaintiff has moved that the Defendants, State of South Carolina, William T. Howell, and the Justices of the South Carolina Supreme Court, should be declared in default and the releif demanded in the Complaint awarded because these Defendants"... have not filed an Answer with the Clerk of the U.S/ District Court ...." However, it is clear from the file in this case that these Defendants timely served

and filed a Motion to Dismiss pursuant to Rule l2(b). Fed. R. Civ.P. Plaintiff filed his complaint on May 3l, l99l. The returns of service in the file show that the Defendant William T. Howell was served on June 7, l99l, the State of South Carolina was served on June 5, l99l, and the members of the Supreme Copurt of South Carol9ina were serced on June 5, l99l. Pursuant to Rule l2(a). Fed.R.Civ.P., a Defendant has twenty (20) days after the service of the summons and complaint to serve an answer. However, service of a Rule l2(b) motion extends the time for filing an answer until such time as the Court denies the motion or postpones its disposition until the trial on the merits. Rule l2(a)(l) Defendants timely filed their Rule l2(b) motion on June 20, l99l, and are not in default. Therefore, Plaintiff's Motion for Judgment by Default must be denied.

(b) Defendant State of South Carolina. The \Defendant State of South Carolina asserts that claims against it under 42 U.S.C.§ 1983 are

barred by the El;eventh Amendment. The Eleventh Amendment to the United States Constitution provides as follows:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

In addition to barring suit against a state by citizens of another state or a foreign country, the Eleventh Amendment also bars suits against a state by citizens of that state. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 (l984). Thereffore, in the absence of a consent to suit or waiver of immunity, a state is shielded from suit in Federal Copurt by virtue of the Eleventh Amendment. Id. Although Congress may expressly abrogate a State's Eleventh Amendment immunity pursuant to its enforcement power under the Fourteenth Amendment,

the United States Supreme Court has consistently held that neither a state nor a state official in his pffocial capacity is a "person" for purposes of a 1983 damages action. Will v. Michigan Department of State Police, 109 S. Ct. 2304 (1989). Plaintiff's reliance on Monell v. Dept. of Social Services, 436 U. S./ 658 (1978), is misplaced. The State of South Carolina is not a "local government " under Monell. Therefore, since Congress in enacting 1983 did not abrogate the State's Eleventh Amendment immunity, a claim under this section against the State of South Carolina is barred. Additionally, to the extent that Plaintiff's action copuld be construed as a suit against the Defendant judges in their official capacities, such a claim is also barred by the Eleventh Amendment. Pennhurst State School and Hospital v. Halderman, supra, at 98-100.

While neither a State nor a State official in his official capacity is a "person" for purposes of a 1983 damages action, a State official may be sued in their official capacity under 1983 for

injunctive relief. Will v. Michigan Department of State Pol;ice, 491 U.S. 58, 71, n.10 (1989). However, injunctive relief is not available here. A Fede5ral District Court does not have jurisdiction to reverse or modity a final order of a State Court. Czura V. Supreme Court of South Carolina, 632 F. Supp. 267 (D.S.C.1986) aff'd 813 F.2d 644 (4th Cir. 1987).

(c) The Defendants William T. Howell and the Individual Justices of the South Carolina Supreme Court. With regard to the individual Judge and Justices named as Defendants in this case, Plaintiff's only claim against them, as stated in his \Complaint, is that summary judgment was granted for the Defendants in his malpractice action (by Judge Howell), that his {the Plaintiff's} Motion for Summary Judgment was not granted (by Judge Howell),and that the Plaintiff's appeal of Judge Howell's summary judgment order was denied (by the individually named Chief Justice and Associate Justices of the South Carolina

Supreme Court.

In essence, the Plaintiff is suing these judicial officials because he did not like the way they ruled in his malpractice case. Such a suit against these Defendants is clearly barred and is frivolous. As Judge Gambrell noted in his previous order., although Plaintiff may not agree with this rule, Judicial officers have absolute immunity for any actions performed in their official capacity. Plaintiff has alleged that these judicial officials' actions were improper. However, unless Plaintiff can show that their actions occurred "in clear absence of all jurisdiction," these Defendants are absolutely immune from liability, even if their actions were taken in error, maliciously or in excess of their authority. Stump v. Sparkman, 435 U.S. 349, 356 (1978); see also Chu v. Griffith, 771 F. 2d 79 (4th Cir. 1985; cert denied. 475 U.S. 1023 (1985); King v. Myers, 973 F 2d 354 (4th Cir. 1992). A review of the record reveals that the actions taken by these judicial Defendants in Plaintiff's earlier

cases were performed in their official capacities, and they are therefore entitled to dismissal of the claims against them on the basis of their absolute immunity from suit. Stump v. Sparkman, supra.

(d) The Defendants John E. Waites, Michael . Church, Funderburk & Derrick, and James W. Alford. Plaintiff's claim against the Defendants John E. Waites and Funderburk & Derrick is that these Defendants committed legal malpractice, for which they were sued in state court. Plaintiff's claim against these Defendants has been adjudicated pursuant to the orders issued by Judge Howell and the South Carolina Supreme Court. Plaintiff may not now re-litigate this malpractice action in Federal Court.Czura v. Supreme Court of South Carolina , supra.

Plaintiff's claim against the Defendants Church and Alford is essentially that they represented Waites and the Funderburk firm in the mal[ractice action. Plaintiff asserts in his complaint that all four of these Defendants' actions in his {the Plaintiff's}

malpractice action constituted" ...an unlawful, willful and severe violation of the Plaintiff's constitutional right to a jury trial of his peers." However, there is no Federal constitutional right to a jury trial in a state court civil action. Colgrove v. Battin, 413 U.S. 149, 170, n. 4 (1973) Further, State action is required to bring suit under 1983. None of the named Defendants (Waites, Church, Funderburk & Derrick, Alford) are government officials or were acting under color of state law, which is a jurisdictional prerequisite for any action brought under 42 U.S.C. §1983. See Deas v. Potts, 547 F.2d 800 (4th Cir. 1976); Hall v. Quillen 631 F.2d 1154, 1155 (4th Cir. 1980), cert, denied 454 U.S. 1141 (1982). Martinez v. California, 444 U.S. 277 (1980).

(e). Finally, following the Supreme Court's denial of his appeal, Plaintiff could have sought review in the United States Supreme Court. 28 U.S.C. 1257; see also District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). However, instead of seeking review by the

U,S. Supreme Court of the State Supreme Court's denial of his appeal, Plaintiff filed this action in the United State District Court. A United States District Court has no authority to review final judgments of a state supreme court. Id; see also, Czusa v. Supreme Court of Southy Carolina, supra.

Conclusion

For the reasons cited herein, the Plaintiff's Motion for Judgment by Default is denied; Defendants' motions is granted; and the case is dismissed pursuant to Ru;e 12 (b) (l), (2) and (6).

IT IS SO ORDERED.

_____

Joseph F. Anderson, Jr.
United States District Judge

March 19, 1993
Columbia, South Carolina

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

CASE NO. 93-1475

Arthur H. Keels, Plaintiff-Appellant

v.

State of South Carolina; William T. Howell,Honorble; George T. Gregory, Chief Justice; David W. Harwell, Associate Justice; A. Lee Chandler, Associate Justice; Ernest A. Finney, Jr. Associate Justice; Jean Toal, Associate Justice; John E. Waites; Michael S. Church; Funderburk & Derrick, Attorneys; James W. Alford, Attorney,

Defendants-Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia, Joseph \F. Anderson, Jr., District Judge.

(CA-91-1570-3-17-B)

Submitted: July 16, 1993

Decided: August 2, 1993

Before NIEMEYER, HAMILTON, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Arthur H. Keels, Appellant Pro Se. Edwin Eugene Evans, Senior Assistant Attorney General, Columbia, South Carolina; Michael Stephen Church, TURNER, PADGET, GRAHAM & LANEY, P.A., Columbia, South Carolina; James Warner Alford, R. Lewis Johnson,BARNES, ALFORD, STORK & JOHNSON , Columbia,South Carolina for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6..

OPINION

PER CURIAM;

Arthur H. Keels appeals from the district court's

order denying relief under 42 U.S.C. 1983 (1988) Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court, Keels v. South Carolina, No. CA-91-1570-3-17-B (D.S. C. Mar. 19, 1993). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

September 13, 1993

No. 93-1475

CA-91-1570-3-17-BD

ARTHUR H. KEELS

Plaintiff - Appellant

v.

STATE OF SOUTH CAROLINA; WILLIAM T. HOWELL, HONORABLE; GEORGE T. GREGORY, Chief Justice; DAVID W. HARWELL, Associate Justice; A. LEE CHANDLER,Associate Justice; ERNEST A. FINNEY, JR., Associate Justice; JEAN TOAL,Associate Justice; JOHN E. WAITES; MICHAEL S. CHURCH, FUNDERBURK & DERRICK, Attorneys; JAMES W. ALFORD, Attorney

Defendants - Appellees

On Petition for Rehearing with Suggestion for Rehearing in Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this court. As no member of this \Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

Yours truly,,

BERT M. MONTAGUE
Clerk

/s/ Z. Yevone Jeffreys
By: _____
Deputy Clerk